IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13101 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALJIBHAI NARANBHAI NANDORIA (GAJJAR)

Versus

DHOLKA MUNICIPALITY

Appearance:

1. Special Civil Application No. 13101 of 2003

MR AMAR D MITHANI for the Petitioner

MR RA PATEL for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 05/08/2004

ORAL JUDGEMENT

Heard the learned advocates.

RULE returnable today. Learned advocate Mr.Patel waives service of rule.

It appears that the dues of the petitioner, a retired employee of the Municipality, has been withheld under the guise of pending disciplinary proceeding. The petitioner retired from service as an X-ray Technician on 31st March, 2000. Since his retirement, he has been issued notice dated 30th July, 2003 informing him that while in service of the Municipality he rendered part-time service in one Smt.Santokba Bhagwati Municipal Hospital. Thus, the petitioner had cheated the Municipality. It is, therefore, ordered that the payment of the outstanding dues of the petitioner be withheld till the disciplinary proceeding is held against him.

Learned advocate Mr.Mithani has submitted that at the relevant time the said Hospital was established, run and managed by the Municipality. By specific order made by the President of the Municipality on 15th October, 1971 the petitioner was permitted to render part-time service in the said Hospital for monthly honorarium of Rs.75=00. The said arrangement continued till the petitioner retired from service. In the mean time, in the year 1985, the management of the said Hospital was transferred to a Trust. The Councillors of the Municipality were the ex officio members of the Managing Committee of the Trust. It is admitted that no disciplinary proceeding has been initiated against the petitioner i.e. for more than 4 years after his retirement.

The notice dated 30th July, 2003 issued by the Chief Officer of the Municipality is clearly vindictive; it appears to have been issued with a view to harassing the petitioner and with a view to avoiding payment of retiral dues of the petitioner. The Municipality has no right to withhold the retiral dues of a servant in the pretext of contemplated disciplinary proceeding. In the said circumstances the impugned notice dated 30th July, 2003 and the order withholding the payment of the retiral dues of the petitioner are quashed and set aside. The respondent Municipality is directed to remit the outstanding dues of the petitioner with interest @ 6% per annum from the date of his retirement till the date of payment. On the amount of gratuity the petitioner will receive interest as directed by the Controlling Authority.

In the event the Municipality fails to make the

payment as aforesaid, the Municipality shall be liable to pay cost to the petitioner of Rs.10=00 for every day of delay in making the payment.

The petition is allowed in the above terms. Rule is made absolute with cost.

(Ms. R.M.Doshit, J.)

/sakkaf